99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-489

SETTLING UNRESOLVED CLAIMS RELATING TO CERTAIN ALLOTTED INDIAN LANDS ON THE WHITE EARTH INDIAN RESERVATION, TO REMOVE CLOUDS FROM THE TITLES TO CERTAIN LANDS, AND FOR OTHER PURPOSES

MARCH 10, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1396]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 1396) to settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of S. 1396 is to settle claims resulting from alienation of certain allotted Indian lands on the White Earth Indian Reservation by retroactively ratifying certain land transactions and removing legal uncertainties relating to these claims.

BACKGROUND

Through a series of treaties culminating in 1867, the United States agreed to reserve and preserve approximately 825,000 acres of land for the use and benefit of the Chippewas. This land located in Mahnomen, Becker and Clearwater Counties, Minnesota comprises the White Earth Chippewa Reservation.

By 1867, the Mississippi Chippewa community had become infused with a separate, but related group whose ancestral admixture was comprised of Chippewa Indian and French-Canadian stock. This latter group was associated with the fur trade along the Mississippi and referred to as "half-breeds" or "mixed-bloods". The distinction between "mixed blood" and "full blood" from the Indian

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perspective stemmed more from economic and social attitudes rather than genetic composition. The relations between these two groups were strained from early times, the mixed bloods being considered more progressive by the United States and the Indian agents.

In 1887, Congress enacted the General Allotment Act establishing a national policy of alloting tribal lands in severalty among the members of tribes occupying reservations.

In 1889, Congress, under the Nelson Act, directed the Secretary of the Interior to subdivide the 36 townships of land reserved for the White Earth Band of Chippewas by the 1867 treaty and to provide a parcel to each living Indian. The selection of tracts by individual Indians began in the early 1890's, with the first trust patent issued in 1902. Each trust patent guaranteed the United States would hold title to the land in trust for the individual Indian or his heirs for a period of 25 years from the date of issuance, and that no taxes or assessments could be imposed during that period, nor would any conveyance or encumbrance of the land be valid without approval of the Secretary of the Interior. Most White Earth trust patents were issued in 1902, 1907, or 1908.

Executive Orders signed in 1927, 1932, and 1933 extended the trust period to all but a small number of specified tracts. the passage of the Indian Reorganization Act in 1934 extended indefinitely all trust periods then in existence, including those extended by Executive Order.

In 1906, Congress enacted the Burke Act, amending the General Allotment Act to permit the Secretary of the Interior to issue a patent in fee to Indians "competent and capable of managing his or her affairs." Also in 1906, Congress passed what is commonly called the Clapp Amendment. This statute purported to provide that adult mixed blood White Earth Chippewas took their allotments in fee simple rather than subject to any trust. Although the language of the statute is fairly straightforward, the judicial decisions dealing with its effect have held that the General Allotment Act, and the issuance of the trust patents thereunder, created vested rights in the Indians, rights which congress could not unilaterally abrogate without compensation. Among these vested rights were the right to the continuance of the trust relationship and the right to immunity from taxation for the original 25 year period plus applicable extensions, unless the adult mixed blood or his heirs took some affirmative action evidencing a desire to terminate the trust. The Department of the Interior's Solicitor has determined that, since the Clapp Amendment did not terminate the trust relationship, it is the Department of the Interior, and not state or local probate courts, which has jurisdiction and responsibility to determine the heirs of deceased White Earth Chippewas and to distribute their trust estate.

The extent to which pressure had built for access to Indian lands and timber at White Earth and the extent to which advance preparations had been made is reflected by the fact that during the first three weeks the Clapp Act was in effect there were over 250 mortgages of Indian lands recorded in Becker County alone. In a 1909 report to Congress, it was reported that fully 90 percent of the lands allotted to full blood Indians had been sold or mortgaged and

80 percent of the lands on the reservation had passed into the hands of private ownership.

Given this background, and because of the variety of ways in which title problems were initially created as to White Earth allotments, this proposed land settlement is submitted.

It has always been the position of the Committee on Interior and Insular Affairs that proposed legislation affecting Indians should be the result of a negotiated settlement between the parties, including the Indian tribe(s). The claims in this case are of individual Indians and, although the tribe suffered damages by the loss of the lands, it is felt the provisions of this bill adequately compensate the individuals. This bill does not have the official consent of the White Earth Chippewas and the Committee supports the legislation with great reluctance. The circumstances surrounding this case are unusual and do not infer that the Committee will support future Indian land claims legislation without tribal approval.

SECTION-BY-SECTION ANALYSIS

Section 1

The title of the bill is the "White Earth Reservation Land Settlement Act of 1985." The purpose of the bill is to settle unresolved claims relating to certain allotted Indian lands on the White Earth Indian Reservation, to remove clouds from the titles to certain lands, and for other purposes.

Section 2

This section outlines the reasons why this legislation is necessary, including the need to resolve a substantial number of land claims which have arisen due to questionable land transfers, a settlement of such land claims that is fair and equitable to all affected Indians and non-Indians.

Section 3

This section defines the terms which are significant to the legislation, such as "full blood," "mixed blood," "tax forfeited," "trust period," "heir," "transfer," and "allotment."

Section 4

The bill is intended to provide monetary compensation for unlawful transfers of Indian land and apply to the following types of land transactions involving trust allotments on the White Earth Indian Reservation.

(1) allotments or interests in allotments which were tax forfeited while the allotments were still held in trust;

(2) allotments or interests in allotments which were sold by minors while the allotments were still held in trust;

(3) allotments or interests in allotments which were sold by full blood Chippewa Indians without approval by the Secretary of Interior while the allotments were still held in trust;

(4) allotments or interests in allotments which were sold or distributed pursuant to state court probate proceedings while the allotments were still held in trust;

(5) allotments or interests in allotments which were sold by guardians appointed by state courts on behalf of full or mixed blood Indians; and

(6) interests in allotments which were sold while the allotments were held in trust, but which did not have the approval of every Indian who held an interest in a particular allotment.

There are certain types of land transactions involving trust allotments on the White Earth Reservation which are recognized as being valid. As such, the provisions of this bill explicitly do not apply to the following types of land transactions:

(1) the sale of allotments or interests in allotments which have been validated by federal courts;

(2) the tax forfeiture of allotments or interests in allotments after the expiration of the trust period;

(3) the sale of allotments or interests in allotments at any time by an adult mixed blood Chippewa; and

(4) the tax forfeiture of allotments or interests in allotments after the date on which the tax exemption was declared by a federal court to have expired.

Section 5

This section deals with several special situations which require validation:

(1) the determination of heirs by state courts in Minnesota prior to May 9, 1979, are affirmed unless the Secretary performs a separate determination of heirs and notifies the proper country recording office within six months after the bill is enacted;

(2) Several tribal members applied for allotments, but died before the final selection of the allotments were processed. This section ratifies the selection of allotments and provides that the decedent's interests escheat or revert to the White Earth Band which shall be compensated in the manner provided in the bill; and

(3) Land that was allotted originally by treaty in 1867 was reallotted pursuant to a federal law enacted in 1889. This section validates the reallotment of such land.

Section 6

This section provides that land claims will be extinguished, titles will be cleared, and landowners will be immune from suit as soon as the following conditions occur and the Secretary publishes a certification in the Federal Register that these conditions have occurred:

(1) The State of Minnesota transfers 10,000 acres of land to the Band;

(2) the State of Minnesota appropriates $500,000 to help the United States with the computer and technical assistance necessary to implement the bill; and

(3) the United States appropriates $6.6 million for the Band's Economic Development Fund.

Until the Secretary publishes this certification, titles will not be cleared and lawsuits to re-claim will not be prohibited.

A statute of limitations is built into the legislation. This section extinguishes the claims that might exist due to the land transfers described in Section 4(a), 4(b), and 5(c), but establishes a statute of limitations for claims of either the allottees, heirs, or the Band. Unless the allottees or heirs file their actions for title not later than 180 days from the date of enactment of the Act, or prior to the date the Secretary publishes the certification described above, whichever is later, they are forever barred from seeking title to the land. The White Earth Band is barred from filing for title to any land upon enactment of the bill, unless the Secretary fails to publish the certification described above within two years from the date the bill is enacted. In the event anyone files an action for title to the land, such persons are prevented from receiving compensation as provided for in the bill.

This section also allows those persons seeking compensation under the bill to challenge the constitutional adequacy of the compensation determined by the Secretary, so long as the challenge is filed within 180 days of the issuance of the notice of the Secretary's compensation determination. In addition, if a person challenges the adequacy of the compensation pursuant to this section, such person is barred from receiving any compensation under the bill.

Section 7

This section requires the Secretary to investigate and determine which White Earth allotments fall within the disputed categories of land transactions outlined in Sections 4(a), 4(b), and 5(c).

The Secretary shall publish his initial determination in the Federal Register and several newspapers in Minnesota within six months from enactment of the bill in order to allow the public to identify additional lands which might fall within the disputed categories of land transactions. Such additions must be submitted to the Secretary within one year from the date of publication in the Federal Register of the first list. Based on these submissions, the Secretary shall publish a second list of allotments.

The Secretary's determination to include or not include an allotment on the first list may be challenged judicially through the Administrative Procedures Act so long as the challenge is filed within 90 days from the date of publication of the first list. A similar challenge is allowed once the second list of allotment is published.

Section 8

This section provides that compensation will be given to each heir or allottee who has been identified as losing an interest in land due to the clearing of titles and extinguishment of claims outlined in the bill. The compensation formula shall be the fair market value of the land as of the date of the disputed transaction, less compensation actually received, plue interest compounded annually at five percent until the date of enactment of the bill, and at market rates thereafter.

Compensation actually received will not be subtracted in cases of actual fraud or where land was sold without approval by any Indian under 18 years of age. In addition, compensation shall not be given to any person or heir where both an allotment was received pursuant to state court probate and where it is determined

by the Secretary that such person or heir was not entitled to inherit the allotment.

This section sets out the process for Secretarial notification to allotees and heirs of the compensation determination and distribution, and provides that the Secretary shall give written notice to those heirs or allotees whose address can be found by reasonable and diligent efforts. All others shall receive notice through publication in the Federal Register.

This section allows judicial review through the Administrative Procedures Act of the Secretary's determination of the appropriate amount of compensation so long as the review proces is initiated within six months from the Secretary's notification to the allottees and heirs.

Section 9

This section requires the Secretary to determine the heirs entitled to compensation under this bill, except to the extent that such heirs have already been determined and acknowledged pursuant to state court probate as provided in section 5(a) of this bill.

Section 10

This section provides that claims are not extinguished and titles are not cleared until and unless the contributions and appropriations required from the State of Minnesota and the United States are made.

This includes (1) the transfer of land from the State to the United States in trust for the Band, including a provision to ensure continued access to the public across the lands transferred; (2) an appropriation of $500,000 from the state to the United States for the computer and technical assistance necessary to implement the bill; and (3) an appropriation for the United States of $6.6 million to the Band.

Section 11

This section provides that nothing in the bill is intended to alter the jurisdiction of either the State, the White Earth Band, or the United States within the exterior boundaries of the White Earth Reservation.

Section 12

This section established the White Earth Economic Development Fund to be held in trust by the United States for the Band. The Fund is to include the monies received by the Band pursuant to this bill, such as the $6.6 million appropriated by the United States and the compensation that reverts to the Tribe due to the inability of the Secretary to locate allottees or heirs which are entitled to compensation under the bill.

Section 13

This section provides the legal authority for the State to transfer certain lands to the United States in trust for the Band.

Section 14

This section sets forth a five year time limit for the Secretary to accomplish the requirements and objectives of the bill.

Section 15

This section authorizes the appropriations needed to comply with the provisions of the bill.

Section 16

This section provides that the monies distributed under the bill shall not be subject to state or federal income taxes or be considered as income for purposes of determining eligibility for certain public welfare programs.

Section 17

This section allows land exchanges within the exterior boundaries of the White Earth Reservation if the Band and the State or the United States desire a land exchange.

Section 18

This section provides that land acquired by the Band pursuant to this bill or acquired with funds referred to in the bill shall be held in trust by the United States for the Band.

COST AND BUDGET ACT COMPLIANCE

Enactment of S. 1396, as ordered reported from the Committee is expected to result in a cost of $25,000,000. This is contingent on the State of Minnesota contributing $500,000 towards the settlement of this claim and the transfer of 10,000 acres of State land to the United States to be held in trust for the White Earth Band. An explanation of the costs to the federal government is contained in the analysis prepared by the Congressional Budget Office and follows:

Congressional Budget Office cost estimate

1. Bill number: S. 1396.
2. Bill title: White Earth Reservation Land Settlement Act of 1985.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs on February 26, 1986.
4. Bill purpose: This act would retroactively ratify certain land transactions by which individual Indian allottees divested ownership of their trust allotments or interests in those allotments. This ratification would be contingent upon the transfer of 10,000 acres of land by the State of Minnesota to the United States to be held in trust for the White Earth Band of Chippewa Indians; the appropriation of $500,000 by the State of Minnesota to assist in the implementation of this legislation; and appropriation of $6.6 million by the federal government for an economic development fund for the Band. The federal government would also pay all claims recognized under this act.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated budget authority (direct spending)		10.0	2.0		
Estimated authorization level		8.6	2.0	1.0	1
Total estimated authorization level/budget authority		18.6	4.0	1.0	1
Estimated outlays		13.6	7.3	2.5	1

The costs of this bill fall within budget functions 450 and 800.

Basis of Estimate: For the purposes of this estimate, it is assumed that all sums authorized will be appropriated and that enactment will occur in time to allow the inclusion of funds in fiscal year 1987 Bureau of Indian Affairs (BIA) appropriations.

The bill states that compensation for the loss of an allotment or interest in an allotment shall be the fair market value of the land interest at the time ownership was transferred, less any compensation received, plus interest compounded annually at five percent until the date of enactment of this act. After that date, interest will accrue at the general rate earned by Department of the Interior funds. The BIA estimated in 1983 that claims under this act, including accrued interest, would total about $10.4 million. These claims would be paid by the Department of the Treasury into the White Earth Settlement Funds, from which they would be distributed by the Secretary of the Interior. This estimate assumes that all claims would be paid into the fund in fiscal years 1987 and 1988, by which time they are estimated to total approximately $12 million. Payment of such claims would not require appropriation action.

The bill also authorizes the appropriation of $6.6 million for White Earth economic development. This sum is assumed to be appropriated in fiscal year 1987 and is disbursed according to historical patterns of similar federal programs.

In 1983, the BIA estimated administrative, investigative, and probate costs associated with a similar bill to be $5.5 million. This estimate assumes that the necessary funding, now projected to be about $6 million, will be provided for these expenses over the lifetime of the program.

6. Estimated cost to State and local governments: This bill would require an appropriation of $500,000 by the State of Minnesota and a transfer of 10,000 acres of land to the United States to be held in trust for the White Earth Band. While the final decision concerning the lands to be transferred has not been made, the Minnesota Department of Natural Resources has estimated the value to the state of 10,000 acres to be approximately $6 million.

7. Estimate comparison: None.

8. Previous CBO estimate: On November 18, 1985, CBO prepared a cost estimate for S. 1396 as amended and ordered reported by the Senate Select Committee on Indian Affairs. The estimated costs are the same in both estimates.

9. Estimate prepared by: Paul M. DiNardo.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director, for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Enactment of S. 1396 will have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the committee and no recommendations were submitted to the committee pursuant to Rule X, clause 2(b)2.

COMMITTEE RECOMMENDATIONS

The Committee, by voice vote, recommends approval of the bill.

EXECUTIVE COMMUNICATIONS

No communications were received from the Executive Branch regarding this legislation.

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